

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.14161 OF 2006

Dated: 30-10-2006

Between :

G. Sridhar Goud ... Petitioner

And

1. The Commissioner of Prohibition & Excise,
Govt. of Andhra Pradesh, Hyderabad, and
3 others. .. Respondents

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ORDER :

The petitioner was the highest bidder in the auction conducted for the lease year 2006-2008 under the provisions of The Andhra Pradesh Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005 (for short, 'the Rules') in respect of the shop at Gazette Sl.No.148, Ward No.55, Musarambagh, Hyderabad. Pursuant thereto he has selected the premises bearing No.16-11-492/1A, Prem Chambers, Dilsukhnagar, Hyderabad for locating the shop in terms of Rule 27 of the Rules. The said premises belongs to the 4th respondent and the petitioner claims that he has been in occupation of the same as a lessee from the year 2001 and has been carrying on the very same business in sale of liquor under valid licence. During the lease year 2005-06, in view of certain differences arose, the 4th respondent made a complaint alleging that the petitioner was selling liquor in loose and consumption of liquor was being allowed in and around the licensed premises contrary to the Rules. Though the said allegations were found to be incorrect in the enquiry conducted by the Prohibition & Excise Inspector-S.H.O., Malakpet, the 4th respondent filed W.P.No.11292 of 2006 alleging that the objections raised by her were not considered. The said writ petition was disposed of by this Court by order dated 12-6-2006 with a direction to the 1st respondent to consider the representations of the 4th respondent dated 28-2-2005 and 17-6-2005 and to take necessary action in accordance with law after affording an opportunity to the petitioner

herein to rebut the allegations. Thereafter, the 2nd respondent – Prohibition & Excise Superintendent, vide impugned proceedings dated 6-7-2006 informed the petitioner that since the proposed premises is under dispute, the consent of the owner is required and accordingly called upon the petitioner to obtain No Objection Certificate (NOC) from the owner of the premises or in the alternative to select an alternate suitable premises within the same ward.

Aggrieved by the same, this main writ petition is filed contending inter alia that under Rule 27 of the Rules, it is not obligatory on the part of the successful bidder to submit NOC from the owner of the premises for running the business and therefore the impugned action of the 2nd respondent in insisting on furnishing NOC is arbitrary and illegal. It is also alleged that in terms of the order in W.P.No.11292 of 2006 though the petitioner was entitled to rebut the allegations, no opportunity was given to him before passing the impugned order.

This Court while directing notice to the respondents, by order dated 12-7-2006 directed the 2nd respondent to consider the application of the petitioner for grant of A-4 licence in premises bearing No.16-11-492/1A, Prem Chambers, Dilsukh Nagar, Hyderabad which shall be subject to further orders in the writ petition. Pursuant thereto, the petitioner has been granted licence and as on today he is running the shop in the premises in question.

In the counter-affidavit filed on behalf of the respondents 1 to 3, it is stated that the S.H.O., Malakpet, after due enquiry, found the allegations made by the owner of the premises (4th respondent) were incorrect. The same was communicated to the owner of the premises by letter dated 12-7-2006. However, keeping in view the disputes between the petitioner and the 4th respondent, who is the owner of the premises, the petitioner was required under the impugned letter to obtain NOC from the owner.

The 4th respondent filed a detailed counter-affidavit stating that though it is a fact that the petitioner has taken the premises on lease under a lease deed dated 1-5-2001, the lease was only for a period of 11 months from 1-5-2001 to 31-3-2002. Thereafter, though the lease was renewable at the option of the owner with the increase of rent at the rate of 10% every year, after 31-3-2002, the lease period was not renewed. In spite of the same, the petitioner has been high-handedly running the wine shop in the premises in question. The residents of the locality also made complaints to the respondents 1 to 3 alleging that the petitioner was allowing the consumption of liquor outside the premises causing nuisance and disturbance to the public. Hence, the impugned order was rightly passed and no interference is warranted by this Court. As a matter of fact, the 4th respondent has already issued a quit notice dated 1-4-2006 under Section 106 of Transfer of Property Act, 1882 terminating the tenancy of the petitioner by the end of 30-4-2006. Thereafter, O.S.No.1120 of 2006 has been filed seeking recovery of possession, arrears of rent and mesne profits which is pending on the file of the Court of VII-Senior Civil Judge, City Civil Court.

I have heard the learned Counsel for both the parties and perused the material on record.

Though the petitioner, as on today is continuing in possession of the premises in question, the specific case of the 4th respondent who is the owner of the premises is that the lease in favour of the petitioner stood expired on 31-3-2002 itself and thereafter no valid lease is subsisting. The claim of the writ petitioner that the lease is renewable with 10% increase in the rent every year does not appear to be correct in view of clause-10 of the lease deed which provides for renewal only at the option of the owner. At any rate, nothing has been placed before this Court to show that as on today a valid lease is subsisting in favour of the petitioner. However, the petitioner contends that since Rule 27 of

the Rules does not require the licensee to produce any document to establish the subsistence of a valid lease, the 2nd respondent is not competent to raise any objection as to the validity of lease in respect of the premises in question much less insist upon production of No Objection Certificate from the owner.

The scope and object of Rule 27 (1) was considered by this Court in W.P.No.13739 of 2005 and it was held as under :

*“A perusal of the above Rule, with particular reference to the words **“subject to the approval”** and **“suitable premises”** makes it clear that the Legislature intended to confer some amount of discretion on the Prohibition & Excise Superintendent in the matter of deciding suitability of the premises. There is nothing in the Rule to indicate either expressly or impliedly that once the conditions specified under Rule 27 are satisfied, the Prohibition & Excise Superintendent is bound to grant the licence. On the other hand, the words “subject to the approval” and “suitable premises”, undoubtedly indicate that while assessing the suitability of the premises selected by the successful tenderer the Prohibition & Excise Superintendent, if necessary, can go beyond the requirements specified under Rule 27. Having regard to the particular facts and circumstances, even after compliance with the requirements under Rule 27, the Prohibition & Excise Superintendent in exercise of his discretion may decline to approve the premises selected by the successful tenderer. However such exercise of discretion shall not be arbitrary or unreasonable, but must be based upon cogent material having nexus to the purpose sought to be achieved.”*

In the light of the ratio laid down in the above decision and having regard to the rival claims made by the parties, the impugned order cannot be held to be illegal or beyond the power conferred under Rule 27 of the Rules. In the circumstances, the impugned order does not warrant any interference by this Court.

Accordingly, the Writ Petition is disposed of granting liberty to the petitioner to produce NOC from the owner of the premises or any other material to show that he is entitled to continue in possession of the premises in question within two weeks from the date of receipt of this order. Thereafter, the 2nd respondent shall make an enquiry as to the rival claims made by the petitioner and the fourth respondent and after satisfying himself as to the entitlement of the petitioner to continue in possession of the premises in question, pass appropriate orders in accordance with law within a period of four weeks. On the

basis of such order, the licence granted in favour of the petitioner pursuant to the interim order of this Court shall be reviewed.

Writ Petition is accordingly disposed of. No costs.

G. ROHINI, J.

Dt. 30-10-2006

gbs